IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 518 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

SOMABHAI MAGANBHAI RAVAL

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 518 of 1992
MR G RAMAKRISHNAN for Appellant
MR KG SHETH A.P.P. for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing this appeal under Section 374 (2) of the Code of Criminal Procedure, 1973, the appellant has challenged the legality of the judgment dated April 16, 1992 rendered by the learned Additional Sessions Judge, Nadiad in Sessions Case No.195/90, by which he is convicted under Section 302 I.P.C. and punished with imprisonment for life.

2. Deceased Lilaben was a resident of village Ravdawat, Taluka Kapadwanj, District Kheda. She was given in marriage to the present appellant who is a resident of village Bhaner, Taluka Nadiad, District Kheda. During the subsistence of the marriage, deceased had given birth to three children. The deceased was fair, good looking and of pleasant nature. The deceased and the appellant were doing labour work at the field of one Udabhai Gokalbahi Thakore of village Bhaner and the appellant had suspicion that the deceased had illicit relations with Udabhai. The incident in question is alleged to have taken place on November 4, 1989. A week prior to the date of incident, the deceased had gone to the house of her mother where she was given grains as well as clothes by her brother Mangabhai Chunabhai. Son of Mangabhai Chunabhai was suffering from jaundice and, therefore, while returning to the house of the appellant, the deceased had also brought the son of Mangabhai Chunabhai for treatment and also his daughter. She had informed Mangabhai Chunabhai that she would reach back the children within three days. However, the children did not reach back within three days and, therefore, Gajaraben who is mother of the deceased came to the place of appellant for bringing back the children at village Ravdawat. On returning home, Gajaraben informed her son Mangabhai Chunabhai and others that deceased Lilaben was not found at the house of the appellant. Therefore, Mangabhai Chunabhai and others had come to village Bhaner and made inquiries about the deceased. The appellant was not found at his house and on making inquiry with Kantibhai Maganbhai Rawal, who is brother of the appellant as well as mother of the appellant. Mangabhai Chunabhai and others were informed that the deceased was not at the house. Mangabhai Chunabhai and others had made inquiries at other places also about the deceased, but the deceased could not be traced. Again attempts were made by Mangabhai Chunabhai and others to find out whereabouts of the deceased and as the search did not yield any result Keshabhai Chunabhai the brother of the deceased, lodged information with Mahuva police station on November 18, 1989, to the effect that his sister

Lilaben was missing since 15 days. In the said information, it was also mentioned that his brother-in-law i.e., the present appellant was also not found in village Bhaner. Unarmed Head constable Surmabhai Nanjibhai who was formally serving at Kapadwanj police station was transferred to Mahuva police station on December 29, 1989, and the information regarding missing Lilaben was entrusted to him on December 31, 1989 for investigation. Surmabhai Nanjibhai had interrogated Kantibhai Mangabhai who is brother of the appellant on January 4, 1990, and the interrogation revealed that the appellant had killed the deceased as he had suspicion that the deceased had illicit relations with Udabhai Gokalbhai Thakore of village Bhaner. Therefore unarmed First Grade Jamadar lodged complaint against the appellant on January 5, 1990 with Senior Police Sub Inspector of Mahuva police station which was reduced into writing and registered. On making further inquiry Surmabhai Nanjibhai could locate whereabouts of the appellant and the appellant was arrested on January 6, 1990. While in police custody the appellant volunteered to show place where the dead body of the deceased was lying, in presence of panch witnesses and, therefore, the Investigating Officer with the panch witnesses and others had gone to the place pointed out by the appellant which was located in the ravines of the river and was secluded. From the place pointed out by the appellant the Investigating Officer seized (i) earth which was blood stained, (2) broken match box, (3) bones, (4) saffron and green coloured bangles, (5) green coloured piece of sari, (6) tuft tied with ribbon, (7) skull bone, (8) necklace of the white and blue beads. (9) one necklace of black beads, (10) red and white metalled necklace of beads, (11) anklets etc. The above referred to articles which were discovered pursuant to the information given by the appellant were identified by witness Mangabhai Chunabhai as belonging to her deceased sister. After the discovery of the articles mentioned above, the appellant had volunteered to show the place where he had hidden the knife used in commission of the crime. Pursuant to the voluntary disclosure made by the appellant the Investigating Officer in the company of panch witnesses and others had come on kachha road leading from Waghavat hill to village Ravdawat and after climbing the hill the appellant had taken out blood stained knife from a shrub. The knife was also seized by the Investigating Officer under a panchnama. The incriminating articles were sent to Forensic Science Laboratory for analysis. Investigation into the case was made by Mr.P.S. Rathod, who was then Police Sub Inspector of Antarsuba police station.

3. The appellant had also produced in presence of panch witnesses a chit which he had got written from witness Melabhai Shankerbhai which was also seized during the course of investigation, wherein an apprehension was expressed that those against whom the application had been made had kidnapped his wife. We may state that the appellant was arrested in the presence of panchas and while preparing panchnama of the person of the appellant an application addressed by him to D.S.P. Kheda and described as Criminal complaint was found wherein the appellant had alleged that Udabhai Gokalbhai Thakore of village Bhaner as well as Mangabhai Chunabhai who is brother of the deceased and others had kidnapped his wife. The said application was also seized under the panchnama. On conclusion of investigation, the appellant was chargesheeted of the offences punishable under Section 302 and 201 of I.P.C. in the Court of learned Judicial Magistrate, First Class, Kapadwanj. As the offence punishable under Section 302 of the I.P.C. is exclusively triable by a Court of Sessions, the case was committed to Sessions Court Kheda at Nadiad for trial where it was numbered as Sessions Case No.195/1990.

4. The charge at Exh.2 was framed by the learned Additional Sessions Judge, Nadiad against the appellant of the offences punishable under Section 302 and 201 of the I.P.C. The charge was read over and explained to the appellant who pleaded not guilty to the same and claimed to be tried. Therefore the prosecution examined; (1) Surmabhai Nanjibhai as P.W. 1 at Exh.7, (2) Kantibhai Maganbhai Rawal as P.W.2 at Exh.9, (3) Keshabhai Chunabhai as P.W. 3 at Exh.10, (4) Dahyabhai Chaturbhai as P.W. 4 at Exh.11, (5) Jamnaben Somabhai as P.W.5 at Exh.16, (6) Mangabhai Chunabhai as P.W.6 at Exh.17, (7) Punjiben Chhotabhai as P.W.7 at Exh.18, (8) Shantaben Babubhai as P.W.8 at Exh.19, (9) Melabhai Shankerbhai as P.W.9 at Exh.20, (10) Ratilal Kabhaibhai as P.W.10 at Exh.23 and (11) Prabhatsinh Somasing Rathod as P.W.11 at Exh.25 to prove its case against the appellant. The prosecution also produced documentary evidence such as complaint lodged by unarmed First Grade Jamadar Surmabhai Nanjibhai, panchnama of place of occurrence, panchnama of discovery of articles belonging to the deceased, panchnama of discovery of knife made at the instance of the appellant, panchnama of seizure of chit as well as criminal complaint which was addressed by the appellant to D.S.P. Kheda, the chit which was reduced into writing by witness Melabhai Shankerbhai at the instance of the appellant, information lodged by witness Mangabhai Chunabhai mentioning that his sister Lilaben was missing

since 15 days before lodging of information, report of the analysis etc., in support of its case against the appellant. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement the appellant denied the case of the prosecution and though opportunity was given to him, he did not examine any witness in support of his defence. The learned Judge noticed that no direct evidence was tendered by the prosecution to establish the charge against the appellant and that the whole case against the appellant was based on circumstantial evidence. On appreciation of evidence adduced by the prosecution the learned Judge held that deceased Lilaben had died a homicidal death. The learned Judge further held that it was proved by the prosecution beyond reasonable doubt that the appellant had suspicion that his deceased wife had illicit relations with Udabhai Thakore and, therefore, had strong motive to commit her murder. The learned Judge deduced that at the time of incident the deceased was staying as wife of the appellant and though the deceased was missing the appellant had created evidence to show that the deceased was kidnapped by Udabhai Gokalbhai Thakore as well as others and thus had tried to mislead the investigation. What was noticed by the learned Judge was that pursuant to the voluntary disclosure made by the appellant, articles such as necklace of beads worn around the neck by the deceased, anklets, saffron coloured and green coloured bangles, piece of sari, bones etc., were discovered and blood stained knife was also discovered which unerringly connected the appellant with crime in question. The learned Judge referred to the report of the Forensic Science Laboratory and concluded that the blade of the knife had the same blood group as that of the deceased which indicated that the appellant had the knowledge about the weapon used in the commission of the crime. In view of above referred to findings, the learned Judge held that the circumstances sought to be relied upon were proved by the prosecution beyond reasonable doubt. The learned Judge held that it was proved by the prosecution beyond pale of doubt that the appellant had killed his wife on November 4, 1989. The learned Judge further held that it was proved by the prosecution that the appellant had caused evidence of the commission of the offence to disappear and had committed offence punishable under Section 201 of the I.P.C. In view of these conclusions the learned Judge has convicted the appellant of the offences punishable under Sections

302 and 201 of the I.P.C. and punished him with imprisonment for life by judgment dated April 16, 1992 giving rise to the present appeal.

5. Mr.G.Ramakrishnan, learned counsel for the appellant after taking us through the entire evidence on record contended that as the prosecution has failed to establish the motive for commission of crime, the learned Judge was not justified in convicting the appellant of the offence punishable under Section 302 of the I.P.C. According to the learned counsel, the evidence on record does not establish beyond reasonable doubt that the deceased was wearing the clothes and/or the articles which were found at the place pointed out by the appellant, nor does it establish that the blood stained knife belonged to the appellant and as the circumstances on which the prosecution has relied upon are not proved, the appeal should be accepted. According to the learned counsel for the appellant it is not established by the prosecution that the deceased had sustained injuries either by blade or by knife and as the prosecution has failed to prove the case stated in the charge, the impugned judgment should be reversed. It was emphasized that it is neither proved by the prosecution that injuries with knife were caused on the deceased by the appellant nor it is proved that the appellant had strangulated the deceased by foot and, therefore, the appeal should be allowed. According to the learned counsel abscondence of the appellant is not established by the prosecution nor it is proved that the conduct of the appellant was unnatural, and therefore, the appellant could not have been convicted under Section 302 of I.P.C. It was stressed that it is not proved by the prosecution that the pieces of bones discovered at the instance of the appellant were of the deceased and as homicidal death is not established, the conviction of the appellant should be set aside. The learned counsel pleaded that witness Mangabhai Chunabhai is a got up witness and as the said witness has attributed motive to the appellant as an after thought and that too after the discovery of certain articles at the instance of the appellant, the prosecution case should be disbelieved. It was urged that evidence regarding discovery of articles belonging to the deceased was not reliable as the articles were not discovered pursuant to voluntary statement made by the appellant and, therefore, the same should be discarded while weighing circumstantial evidence. According to the learned counsel no blood stains were found on spot pointed out by the appellant nor it was proved by the prosecution that the deceased was in the company of the appellant alone and as the circumstances relied on by the

prosecution are not established, the appeal should be accepted.

6. Mr.K.G.Sheth, learned A.P.P. submitted that the evidence of prosecution witnesses namely Kantibhai Maganbahi Rawal, P.W.23 at Exh.9 and Melabhai Shankerbhai P.W.9 Exh.20 establishes that the accused was married to the deceased and was staying separate from his brothers as well as mother and that the appellant was last seen in the company of the deceased. The learned counsel for the State pleaded that the evidence led by the prosecution proves it beyond pale of doubt that as the deceased who was serving in the farm of Udabhai Gokalbhai was good looking fair, and of pleasant nature, the appellant had a suspicion that she had illicit relations with Udabhai Gokalbhai and had strong motive to commit the crime in question. What was claimed on behalf of the State was that the mother of the deceased had come to the house of the appellant for bringing the children of Maklabhai back to her house and at that time the mother of the deceased had not found the deceased in the house and the appellant had failed to give any particulars regarding whereabouts of the deceased, which is a circumstance against the appellant. The learned A.P.P. further pointed out that when brothers of the deceased were making inquiries about the deceased, the appellant was keeping away from them and was hiding, which is also a circumstance against the appellant. According to the learned counsel for the State, the appellant had concocted the evidence to show that the deceased was kidnapped by someone by getting chit Exh.21 executed through witness Melabhai Shankerbhai whereas in the Criminal complaint he had tried to make out a case of kidnapping of his wife by Udabhai Gokalbhai and had tried to mislead one and all, which establishes his guilty mind. The learned counsel for the State further submitted that at the instance of the appellant necklace, anklets, pieces of clothes worn by the deceased, bangles put on by the deceased etc., were discovered and as those articles were identified by witness Mangabhai as belonging to his deceased sister, the homicidal death of the deceased was proved by the prosecution. What was stressed was that pursuant to the voluntary disclosure made by the appellant in presence of the panch witness blood stained knife was discovered on which blood group as that of the deceased was found which establishes that the appellant was connected with the murder of his wife. The learned counsel claimed that the incriminating circumstances proved were put to the appellant but in his further statement recorded under Section 313 of the Code of Criminal Procedure, the appellant has merely denied the same and, therefore, this

denial on the part of the appellant should be treated as an additional link in the chain of circumstances to bring home the charge against the appellant. The learned counsel emphasized that the circumstances which are sought to be pressed into service against the appellant are clearly established by the prosecution and as the combined effect of proved circumstances is such that they exclude the possibility of innocence of the appellant, the appeal should be dismissed.

7. We have heard the learned counsel for the parties at length and reappreciated the whole evidence on record. It is relevant to notice that the prosecution has not claimed that the incident in question was witnessed by any one and no direct evidence relating the incident is tendered before the Court. Admittedly the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis except the one to be proved. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or, are not decisive. Where a case rests squarely on circumstantial evidence, the various sets of circumstantial evidence should be taken into consideration and their total effect should be such that they must lead unerringly to the guilt of the accused. Each fact must be proved individually and only thereafter, the sum total of the proved facts has to be taken into consideration, but this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must prove each and every hypothesis suggested by the accused, however, extravagant and fanciful it might be. In Sharad v.

State of Maharashtra, A.I.R. 1984 S.C. 1622, after referring to earlier case-law, the Supreme Court has summarized the conditions to be fulfilled in a case based on circumstantial evidence as under :-

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned `must' or `should' and not `may' be established'

(ii) the fact so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved;

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and

(vi) where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.

7.1. If the aforesaid various conditions are fulfilled, only then a Court can use a false explanation or a false defence as an additional link and not otherwise. As observed earlier, if the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way. It has to consider the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to

the inference of guilt of the accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, to human conduct and their relations to the facts of the particular case.

8. In the light of the above-referred to principles, we will now consider the question whether the case against the appellant is proved or not. Before considering the circumstances sought to be proved by the prosecution it is necessary to clear the controversy as to which complaint should be treated as First Information Report in the case. In this regard, we notice that Keshabhai Chunabhai who is brother of the deceased had lodged information with Mahuva police station on November 18, 1989 disclosing that his sister was missing since 15 days and that his brother-in-law i.e. the present appellant was also not available at village Bhaner. In the said information no particulars were stated regarding commission of any congnizable offence nor the accused was named therein. Under the circumstances, the said information cannot be treated as First Information Report within the meaning of Section 154 of the Code of Criminal Procedure, 1973. The information which was lodged by Keshabhai Chunabhai was entrusted for investigation to unarmed head constable Surmabhai Nanjibhai on December 31, 1989. His evidence would indicate that on January 4, 1990 he had interrogated Kantibhai Maganbhai Rawal who is brother of the appellant and interrogation of Kantibhai had revealed that the appellant had killed the deceased in ravines of river near Waghavat hills. According to Surmabhai Nanjibhai he had therefore lodged complaint against the appellant for murder of his wife with Senior Police Sub Inspector of Mahuva police station which is produced on record of the case at Exh.8. The learned Additional Sessions Judge, Nadiad, who conducted the trial has held that before lodging of the complaint by unarmed first grade jamadar Surmabhai Nanjibhai on January 5, 1990, witness Kantibhai Maganbhai had already lodged complaint at Exh.24 on November 18, 1989 and therefore, the complaint lodged by unarmed first grade jamadar Surmabhai Nanjibhai is hit by the provisions of Section 162 of the Code of Criminal Procedure. In view of this conclusion, the learned Judge has held that the complaint lodged by unarmed first grade jamadar Surmabhai Nanjibhai is not admissible in evidence and he has

de-exhibited the said complaint. In our view, the approach of the learned Judge is totally erroneous and contrary to the express provisions of Section 154 of the Code of Criminal Procedure, 1973. As observed earlier witness Keshabhai Chunabhai had merely laid an information before the Police officer incharge of Mahuva police station to the effect that his sister was missing since 15 days and that his brother-in-law was not available at village Bhaner. In the said information it was never indicated that any offence was committed by any one in respect of person of his sister and even accusing finger was not pointed out against the appellant or any one else. Therefore in view of the express provisions of Section 154 of the Code of Criminal Procedure, 1973, the information laid by witness Keshabhai Chunabhai could not have been treated as First Information Report in the case. The evidence of unarmed first grade jamadar Surmabhai Nanjibhai establishes that the information laid by witness Keshabhai Chunabhai was entrusted to him for inquiry and on interrogation of brother of the appellant he had learnt that the appellant had killed his wife, and therefore, lodged complaint. Therefore, the complaint lodged by Surmabhai was rightly exhibited as First Information Report in the case and could not have been de-exhibited by the learned Judge. In view of this conclusion of ours, we exhibit the complaint lodged by unarmed first grade jamadar Surmabhai Nanjibhai as First Information Report in the case.

9. At this stage it would be relevant to deal with the application dated November 29, 1989, which was recovered from the person of the appellant while effecting his arrest. We may state that the appellant in his further statement denied the fact that the application dated November 29, 1989 was found from his person and that he had made such an application. However, contents of panchnama Exh.14 which was produced alongwith list at Exh.4 and which is exhibited in the case with the consent of learned counsel for the appellant establishes that from the person of the appellant an application termed as criminal complaint addressed to the D.S.P. Kheda against (1) Udabhai Gokalbhai Thakore, (2) Keshaji Chunaji Rawal, (3) Makalji Chunaji Rawal, (4) Dhulabhai Fulabhai Raval, (5) Babubhai Chhaganbhai Thakore was found. Further, a note-book from which a page was torn and an application against one Udabhai Gokalbhai Thakore, Kantibhai Punjabhai Thakore, Dhulabhai Fulabhai Rawal was got prepared by the appellant through witness Melabhai Shankerbhai was also found. We may state that in the said application, it was stated by the appellant that his wife was kidnapped by

those against whom the said application was filed and the appellant had requested the D.S.P. Kheda, to take appropriate action against those persons. As observed earlier, the appellant had denied to have prepared and signed the said application, but the learned Judge had compared the disputed signature of the appellant on the said application with his admitted signature found on the record of the case such as his signature obtained at the time of recording his plea, signature on the vakalatnama, signature of the appellant on chargesheet as well as statement which was recorded by the learned Magistrate, while committing the case to the Sessions Court for trial and his signature on purshis at Exh.7 and has recorded a finding that the application was signed by the appellant. We may state that though, the learned Judge deduced that the application was signed by the appellant, the learned Judge has not exhibited the same. However, we find that at the time when the application was prepared and signed by the appellant against Udabhai Gokalbhai Thakore and others on November 29, 1989 no complaint was lodged against the appellant at all and First Information Report against the appellant was lodged by the unarmed first grade jamadar Surmabhai Nanjibhai only on January 5, 1990. Under the circumstances, the application which was prepared by the appellant and which was addressed to D.S.P. Kheda should have been exhibited by the learned Judge. There is one more aspect to be considered to determine the question whether this application can be admissible in evidence. It is evident from the record of the case that said application was prepared by the appellant on his own and it was not written pursuant to any interrogation by police under Section 161 of the Code of Criminal Procedure, during the course of investigation of this case. The bar contemplated under Section 162 of the Code of Criminal Procedure against admissibility of this application therefore does not operate.

9.1. Further panchnama Exh.14 reveals that while searching the person of appellant and drawing the arrest panchnama this application which contained accusations against other persons was found from the person of the appellant which was seized by police. However, there is nothing on record to show that the appellant was ever compelled by means of coercion or duress to handover this application to the police. Thus there is no violation or contravention of Article 20 (3) of the Constitution of India. Considering the question of admissibility of application in evidence from any angle we have not the slightest doubt that the same can be admitted in evidence and safely be exhibited.

9.2. We may state that we have also compared the admitted signature of the appellant on the documents which are on record of the case with the disputed signature on application dated November 29, 1989 and on such comparison we find that the findings recorded by the learned Judge to the effect that the application dated November 29, 1989 bears the signature of the appellant being eminently just is hereby upheld. We may state that the learned Judge by comparing the admitted signature of the appellant with the disputed signature has exercised powers conferred on him by Section 73 of the Indian Evidence Act and it is not pointed out on behalf of the appellant that any error was committed by the learned Judge while exercising powers under Section 73 of the Indian Evidence Act. Under the circumstances the application dated November 29, 1989 prepared and signed by the appellant is ordered to be exhibited and given exhibit No.28-A.

10. The first circumstance which is sought to be proved by the prosecution against the appellant is that the appellant was married to the deceased and that he was staying separate from his brother and mother. Witness Kantibhai Maganbhai Rawal P.W.2 Exh.9 who is the brother of the appellant has stated in his substantive evidence before the Court, that the appellant had married the deceased and was staying separate from him and his mother. Though the witness did not fully support the prosecution case and though he was declared hostile, this part of his evidence is not challenged by the appellant in his cross examination at all. Further the evidence of Jamnaben Somabhai P.W.5 Exh.16 who is mother of the appellant proves beyond reasonable doubt that appellant had married the deceased and that the appellant was staying separate from his brother and mother. This fact is stated by witness Jamnaben in paragraph 2 of her deposition, which is not challenged by the appellant during her cross-examination at all. Further the evidence of witness Mangabhai Chunabhai P.W.6 Exh.17 who is brother of the deceased also establishes that the appellant was married to the deceased and was staying separate from his brother and mother. In fact, it is not seriously disputed on behalf of the appellant that he was married to the deceased and that he was staying separate from his brother and mother. Thus the first circumstance which is sought to be proved against the appellant namely that the appellant was married to the deceased and was staying separate from his brother and mother stands fully established.

11. The second circumstance which is sought to be

proved against the appellant is that the deceased was working at the field of Udabhai Gokalbhai Thakore and as the deceased was good looking, fair and of pleasant nature the appellant had suspicion that she had illicit relations with Udabhai Gokalbhai Thakore and had a strong motive to commit her murder. In this regard, the evidence of witness Kantibhai Maganbhai Rawal P.W.2 Exh.9 who is brother of the appellant clearly establishes that the deceased was good looking, fair and of pleasant nature. The fact that deceased and appellant were doing labour work at the field of Udabhai Gokalbhai Thakore is not disputed by the appellant at all. Witness Melabhai Shankerbhai P.W.9 Exh.20 has claimed in his evidence that he had learnt about illicit relations between the wife of the appellant and Udabhai Gokalbhai Thakore. Though the witness was permitted to be cross-examined by the appellant, this assertion made by him in paragraph 3 of his deposition was never challenged. It is relevant to notice that as the deceased was of pleasant nature, she must be mixing with Udabhai Gokalbhai Thakore and that must have given rise to suspicion on the part of the appellant that she had illicit relations with Udabhai Gokalbhai Thakore. In our view the evidence of witness Kantibhai Maganbhai Rawal as well as that of witness Melabhai Shankerbhai proves beyond reasonable doubt that as deceased was good looking, fair and of pleasant nature, the appellant had suspicion that she had illicit relations with Udabhai Gokalbhai Thakore at whose field she was working and that the appellant had strong motive to commit the crime in question. Further the fact that appellant had suspicion that his deceased wife was having illicit relations with Udabhai Gokalbhai Thakore is also exhibited by him in his complaint which is exhibited in the case at Exh.28-A as also from the contents of chit which he had got prepared through witness Melabhai Shankerbhai P.W.9 Exh.20. Witness Melabhai has stated in his substantive evidence before the Court that he had prepared Exh.21 and it is so easy to infer that Melabhai had written the chit at the instance of the appellant. A bare reading of the chit Exh.21 makes it evident that though the name of the appellant as applicant of the chit is not mentioned, the appellant had got mentioned in the chit that his wife was kidnapped by Udabhai Gokalbhai Thakore, Kantibhai Punjabhai Thakore and Dhulabhai Fulabhai Rawal. Unless the appellant had strong suspicion about the character of his wife he would not have mentioned such imaginary facts in the chit which he had got prepared through witness Melabhai Shankerbhai. Further the contents of Exh.28-A also show that the appellant had strong suspicion that deceased had illicit relations with Udabhai Gokalbhai and, therefore, not only

he had made allegations against Udabhai Gokalbhai Thakore regarding kidnapping of his wife, but had also made allegations against two brothers of the deceased because the brothers were making inquiry about their missing sister. In our view, the prosecution has proved beyond reasonable doubt that the appellant had suspicion about the illicit relations between his wife and Udabhai Gokalbhai and had strong motive to commit her murder.

12. The third circumstance which is sought to be proved by the prosecution is that on or about the date of incident the accused was last seen in the company of the deceased. So far as this circumstance is concerned we find from the evidence of witness Kantibhai Maganbhai Rawal P.W.2 Exh.9 that before learning about the death of the deceased he had seen the deceased in the house of the appellant and she was alone in the house of the appellant. As observed earlier, this witness being the real brother of the appellant has not fully supported the case of the prosecution, but the claim made by this witness in paragraph 6 of his examination-in-chief that he had seen the deceased in the house of the appellant two days prior to learning about her death is not disputed by the appellant in his cross-examination at all. Further the evidence of witness Jamnaben Somabhai P.W.5 Exh.16 who is mother of the appellant establishes beyond reasonable doubt that on or about the date of incident the appellant was last seen in the company of the deceased. Witness Jamnaben Somabhai in paragraph 4 of her deposition has clearly stated that she had last seen the deceased going for work and that at that time the appellant was in his house and had thereafter gone at Surat in connection with folk drama. This statement made by witness Jamnaben Somabhai is also not seriously challenged on behalf of the appellant. Therefore it is safe to conclude that prosecution has proved beyond shadow of doubt that on or about the date of incident the appellant was last seen in the company of the deceased.

13. The fourth circumstances which is sought to be proved by the prosecution against the appellant is that the deceased had visited her mother's place and had brought children of Maklabhai with her to the house of the appellant and as the children of Maklabhai did not reach back the house of the mother of the deceased, the mother of the deceased had come to the house of the appellant and had not found the deceased in the house at all. This circumstance is sought to be proved by the prosecution through the evidence of witness Keshabhai Chunabhai P.W.3 Exh.10. This witness in paragraph 2 of his deposition has stated that the mother of the deceased

had gone to the house of the appellant for brining children of Maklabhai and at that time his mother had not found the deceased in the house. The witness has further stated in his substantive evidence before the Court that on learning about the fact that deceased was not in the house of the appellant, he had made inquiries about his missing sister, but he was not able to trace her. Witness Mangabhai Chunabhai P.W.6 Exh.17 whose children were brought by the deceased to the house of the appellant has stated in paragraph 3 of his deposition that as the children had not reached back his house, he had sent his mother Gajraben to bring the children back and that his mother Gajraben had informed him that his sister Lilaben was not at the house of the appellant. According to this witness on learning of this fact from his mother, he had come to village Bhaner and made inquiries about the deceased, but the brother of the appellant and the mother of the appellant had merely replied that the deceased was not in the house. In our view, the evidence of the prosecution witnesses establishes the fact that within 3-4 days of deceased going to the house of the appellant, the mother of the deceased had come to the house of the appellant and had found that the deceased was not in the house at all.

14. The fifth circumstance, which is sought to be proved against the appellant is that when brothers of the deceased were making inquiry about the deceased, the appellant was keeping away from them and hiding. The evidence of witness Mangabhai Chunabhai P.W.6 Exh.17 clearly establishes the fact that on learning from his mother that the deceased was not in the house of the appellant, he and others had made inquiries about the deceased and the deceased was also not found at his house. In paragraph 4 and 6 of his deposition, the witness has clearly stated that though on several occasions he and others had made inquiries about the deceased, the appellant had not met any of them and was hiding. This fact is not challenged by the appellant at all during the cross-examination of this witness. The fact that the appellant was not available at his house is also mentioned by witness Keshabhai Chunabhai in his information which he had lodged with Mahuva police station disclosing that his sister was missing since 15 days. This document is also not challenged on behalf of the appellant. Therefore, in our view it is safe to conclude that when brothers of the deceased were making inquiries about the deceased, the appellant was keeping away from them and hiding.

15. The sixth circumstance which is sought to be proved against the appellant by the prosecution is that

he concocted the evidence to show that the deceased was kidnapped by Udabhai Gokalbhai Thakore. In this connection, we find that witness Melabhai Shankerbhai P.W.9 Exh.20 who is a distant nephew of the appellant has stated in his deposition before the Court that the appellant had meet him and had informed him that his wife was kidnapped by someone. The witness was shown the chit article No.2 and he admitted that it was written by him, at the instance of the appellant. A bare reading of the chit Exh.21 makes it evident that in the said chit it was mentioned at the instance of the appellant that wife of the appellant was missing since one and half month and that kidnappers of his wife were Udabhai Gokalbhai Thakore, Kantibhai Punjabhai Thakore and Dhulabhai Fulabhai Rawal. Moreover we notice that the said chit was written in the name of resident of village Bhaner under the signature of XYZ and addressed to the office of D.S.P. Kheda. Further Exh.28-A which was criminal complaint dated November 28, 1989 signed by the appellant also establishes that the appellant had mentioned therein that his wife Lilaben was kidnapped by Udabhai Gokalbhai Thakore as well as the brothers of the deceased and others. As observed earlier brothers of the deceased were named as persons who had kidnapped the deceased because they were making inquiries about their missing sister. The evidence of witness Melabhai Shankerbhai P.W.9 Exh.20 read with chit Exh.21 as well as complaint drafted by the appellant which is at Exh.28-A of the case proves beyond reasonable doubt that appellant had concocted the evidence that the deceased was kidnapped by Udabhai and others and had tried to mislead the investigation.

16. The seventh incriminating circumstance which is sought to be proved by the prosecution against the appellant is that at the instance of the appellant necklace of beads worn by the deceased, bangles of the deceased etc., were discovered. The evidence of Mangabhai Chunabhai P.W.6 Exh.17 who is brother of the deceased makes it more than clear that the articles belonging to the deceased were discovered, pursuant to the voluntary disclosure made by the appellant and that he had identified the same as belonging to his deceased sister. The evidence of panch witness Dahyabhai Chaturbhai P.W.4 Exh.11 establishes beyond reasonable doubt that in his presence the appellant had made voluntary statement and shown willingness to point out the place where the dead body of the deceased was lying and that after reaching the place pointed out by the appellant articles such as necklace of beads worn round the neck by the deceased, anklets, saffron coloured and

green coloured bangles, pieces of clothes worn by the deceased etc., were discovered. Though this witness was cross-examined at length, nothing could be brought on record which would cast doubt about his version as given by him in his examination-in-chief that the articles belonging to the deceased were discovered pursuant to the voluntary disclosure made by the appellant. Witness Dahyabhai Chaturbhai P.W.4 Exh.11 stands amply corroborated by contents of contemporary documents namely; panchnamas which are proved by him and which have been exhibited in the case. Further the evidence of Investigating Officer Prabhatsinh Somsinh Rathod P.W.11 Exh.25 also proves beyond reasonable doubt that pursuant to voluntary disclosure made by the appellant in presence of panch witnesses, articles belonging to the deceased were discovered and that those articles were identified by witness Mangabhai Chunabhai as belonging to his deceased sister. In this connection, it is relevant to notice the provisions of Section 27 of the Indian Evidence Act, 1872. The first condition necessary for bringing Section 27 into operation is the discovery of fact albeit a relevant fact in consequence of the information received from a person accused of an offence. The evidence on record clearly establishes that articles belonging to the deceased were discovered in consequence of the information received from the appellant. Therefore, the first condition for applicability of Section 27 of the Evidence Act to the facts of the present case stands satisfied. The second is that the discovery of such fact must be deposed to. In the facts of the present case we find that the discovery of articles belonging to the deceased is deposed to not only the panch witness but also by the brother of the deceased as well as by Investigating Officer. The last but the most important ingredient is that only so much of the information relating distinctly to the fact thereby discovered is admissible. The discovery of articles belonging to the deceased may in any given case establish that the appellant had either knowledge or had seen the same being concealed by someone at the place which was pointed out by him. However, when no such explanation is offered by the appellant in his further statement recorded under Section 313 of the Code of Criminal Procedure, irresistible conclusion would be that the appellant had knowledge about the articles belonging to the deceased having been concealed at the place pointed out by him, because he was connected with the crime in question. Further the evidence of panch witness Dahyabhai Chaturbhai as well as that of Investigating Officer P.S. Rathod would indicate that the place pointed out by the appellant was secluded and was not

accessible to all persons. Under the circumstances the discovery of articles belonging to the deceased pursuant to the voluntary disclosure made by the appellant is a circumstance against him and will have to be taken into consideration, while considering other circumstance which are proved on the record of the case by the prosecution. At this stage it is relevant to notice the principles laid down by Supreme Court in case of Rama Anand and others v. State of H.P. A.I.R. 1981 S.C.738. One of the essential ingredients of the offence of culpable homicide required to be proved by the prosecution is that the accused caused the death of the person alleged to have been killed. The Supreme Court has explained that the discovery of the dead body of the victim bearing physical evidence of violence is merely a rule of caution and has never been considered as the only mode of proving the corpus delicti in murder. The Supreme Court has noticed that indeed very many cases are of such a nature where the discovery of the dead body is impossible. The Supreme Court has explained that where the dead body of the victim in a murder case is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution. As explained by the Supreme Court such proof may be the direct ocular account of an eye-witness, or by circumstantial evidence, or by both, but where the fact of corpus delicti, i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. The Supreme Court has further explained that even so, this principle of caution cannot be pushed too far as requiring absolute proof and the corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned. Applying the test laid down by the Supreme Court to facts and circumstances of the present case, we find that there is no manner of doubt that the articles belonging to the deceased discovered pursuant to the voluntary disclosure made by the appellant establish beyond reasonable doubt that the deceased had died homicidal death and that the circumstances proved are of a clinching and definitive character unerringly leading to the inference that the deceased had met a homicidal death.

17. The eight circumstance which is sought to be proved against the appellant is that pursuant to voluntary disclosure made by the appellant the panch

witnesses in the company of the Investigating Officer and others had gone to secluded place on way to Ravdawat from Waghawadat hill and the appellant had taken out blood stained knife from shrubs. This fact is amply proved by the evidence of panch witness Dahyabhai Chaturbhai P.W.4 Exh.11. The witness has stated in paragraph 3 of his deposition that the appellant had taken him and others to the place near shrubs and had taken out the knife in his presence. Though the witness has been cross-examined on behalf of the appellant nothing can be elicited in his cross-examination which would raise doubt about the version stated by this witness in his examination-in-chief. The evidence of this witness stands amply corroborated by contemporary document on record namely panchnama Exh.13. Further the evidence of panch witness stands corroborated by the evidence of Investigating Officer who has also deposed before the Court that in the presence of panch witness the appellant had taken out blood stained knife from shrubs near Ravdawat. We may state that this evidence has almost gone unchallenged, In view of this state of affairs, it is safe to conclude that pursuant to the voluntary disclosure made by the appellant blood stained knife was discovered as mentioned in the said panchnama. The report of the serologist indicates that the blade of the knife had the same blood group as that of the deceased i.e. `AB'. The discovery of knife having same blood group as that of the deceased is also a circumstance which is against the appellant.

18. From the discussions made above, it is clear that the prosecution has been able to prove following circumstances beyond reasonable doubt i.e., (1) the appellant was married to the deceased and was staying separate from his brothers and mother, (2) the deceased was good looking fair and of pleasant nature, and therefore, the appellant had suspicion that she had illicit relations with Udabhai Gokalbhai Thakore at whose field she was working; (3) on or about date of incident the appellant was last seen in the company of the deceased; (4) the mother of the deceased had come to the house of the appellant for bringing the children of Maklabhai and at that time the mother of the deceased did not find the deceased in the house and the appellant and on inquiry being made she was informed that the deceased was not present in the house but no further particulars were supplied; (5) when the brothers of the deceased were making inquiries about their sister, the appellant was keeping away from them and hiding; (6) in order to mislead one and all the appellant had concocted the evidence to show that the deceased was kidnapped by

Udabhai and others; (7) at the instance of the appellant, necklace, anklets, pieces of clothes, bangles, etc., belonging to the deceased were discovered, and those articles were identified by Mangabhai Chunabhai as belonging to her deceased sister; (8) the place of incident pointed out by the appellant was secluded and was not easily accessible to all; (9) the knife discovered pursuant to the voluntary disclosure made by the appellant had the same blood group as that of the deceased; (10) the appellant had not made any attempt to trace out his missing wife and nor informed the police about the same.

19. We notice that the Supreme Court in case of Vasa Chandra Shekhar v. Poona Satya Narayana (2000) 6 S.C.C. 286 and (2) Geetha v. State of Karnataka (2000) 10 S.C.C. 72, while explaining law, relating to circumstantial evidence, has, ruled that where circumstances proved are put to the accused through his examination under Section 313 of the Code of Criminal Procedure and the accused merely denies the same, then such denial would be an additional link in the chain of circumstances to bring home the charge against the accused. As indicated earlier, it is proved by cogent and reliable evidence that the appellant and his deceased wife were staying together and none else was residing with them. Therefore, if the death occurs of the wife in suspicious circumstances, a reasonable explanation was expected from the appellant. Here in this case the incriminating circumstances proved were put to the appellant and in his further statement recorded under Section 313, he has merely denied the same. Therefore such denial on the part of the appellant and non-explanation about the suspicious circumstances in which his wife died will have to be treated as an additional link in the chain of circumstance to bring home the charge against the appellant. The cumulative effect of the circumstances proved above clearly establishes that in all human probability the act of commission of murder of the deceased was done by the appellant. The circumstances proved establish guilt of the appellant beyond reasonable doubt. The conclusion drawn by us from the proved facts are consistent only with the guilt of the accused and therefore the decision rendered by the learned Judge being correct will have to be upheld.

20. The net result of the above discussion is that the prosecution has proved beyond reasonable doubt that the appellant had caused murder of his wife and is rightly convicted under Section 302 of I.P.C. read with

Section 201 I.P.C. because the appellant had caused disappearance of evidence relating to commission of crime also. Having regard to the totality of the facts and circumstances of the case, we do not find any substance in the appeal and the appeal is liable to be dismissed.

For the foregoing reasons the appeal fails and is dismissed. Mudammal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

17.9.2001. (J.M. Panchal, J.)

(Akshay H. Mehta, J.)

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